

**UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH DAKOTA
SOUTHERN DIVISION**

Kristie Spies, Plaintiff, vs. State Automobile Insurance Companies, State Automobile Mutual Insurance Company, State Auto Property and Casualty Insurance Company	Case No. 4:23-CV-4096 COMPLAINT Defendant.
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Plaintiff, Kristie Spies, for her complaint against Defendant State Automobile Mutual Insurance Company, states:

1. Kristie Spies is a resident of South Dakota.
2. Defendants State Automobile Mutual Insurance Company and State Auto

Property and Casualty Insurance Company are entities incorporated and with their principal place of business outside South Dakota, and associated together for purposes of conducting the business of insurance under the common name State Auto Insurance Companies.

3. The amount in controversy exceeds \$75,000.
4. The Court has jurisdiction under 28 U.S.C. 1332, diversity of citizenship.
5. On August 12, 2020, while acting within the scope of her employment at a

insurance sales office, Kristie Spies was having a work related telephone conversation on her cell phone with a co-worker in another office and simultaneously got up from her desk to exit her

office and use the restroom.

6. As she exited her office, she tripped and fell, injuring her right shoulder.

7. Kristie Spies' supervisor was only a few feet away when the incident happened, and heard Kristie fall, after which she immediately attended to Kristie while Kristie was still laying on the floor.

8. Kristie Spies' supervisor took Kristie to obtain medical attention.

9. X-rays revealed a broken humerus at the shoulder joint.

10. As a result of the fall, Kristie Spies incurred \$7,654.38 in medical expenses.

11. State Auto provided the workers' compensation insurance to Kristie Spies employer.

12. Two days after the injury State Auto sent a letter to Kristie Spies stating, "[t]here are no defects with the flooring or explained cause of the fall."

13. State Auto denied Kristie Spies' claim on the basis that her injuries did not arise out of her employment and/or that her injuries did not occur in the course and scope of her employment.

14. Contrary to State Auto's position and denial, the law in South Dakota has long been established that injuries occurring from trip and falls occurring on work premises, during work hours, and while engaged in activities of employment, are compensable injuries under workers' compensation regardless of whether fault or negligence by the employer played any role in causing the injuries.

15. Kristie Spies was forced to hire an attorney and file a petition for hearing with the South Dakota Department of Labor.

16. In its Answer to her Petition, State Auto again denied responsibility for medical or

other workers' compensation benefits, and litigated her claim through a hearing.

17. State Auto forced Kristie Spies to go through a hearing on her petition, and after the hearing, the Department of Labor found that the injury arose out of employment and is a compensable injury.

18. State Auto did not appeal the Department's decision.

19. State Auto had no reasonable basis to deny providing medical worker's compensation benefits to Kristie Spies, because both the Department of Labor and South Dakota Supreme Court have previously held that trip and fall injuries sustained while at work while engaged in work activities to be compensable under workers' compensation.

20. State Auto knew, or with a reasonable investigation should have known, that it had no reasonable basis to deny Kristie Spies' worker's compensation benefits.

21. State Auto either failed to perform a reasonable and good faith investigation of the facts and law before denying or unreasonably delaying Kristie Spies' worker's compensation benefits, or else it knew the law and just ignored it.

22. Upon information and belief, State Auto's conduct is part of a pattern of conduct designed to reduce compensation to injured workers.

23. State Auto acted with fraud, malice, and oppression, making punitive damages appropriate.

24. As a proximate result of State Auto's misconduct, Kristie Spies has been harmed as follows: delay in payment of her medical expenses; emotional upset, aggravation, annoyance, and embarrassment; and it also cost her attorney fees and litigation expenses that should have been unnecessary.

THEREFORE, Plaintiff seeks the following relief:

1. Compensatory damages in an amount to be determined at trial.
2. Punitive damages in an amount to be determined at trial.
3. Pre-judgment interest as allowed by law.
4. Attorney's fees and costs incurred in the efforts to force Defendant to comply with its' obligations.
5. Other relief as deemed appropriate and necessary by either the Court or the jury.

DEMAND FOR JURY TRIAL

Plaintiff hereby demands trial by jury on all the issues in this action.

Dated this 13th day of June, 2023.

By: 
Mike Abourezk
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JS 44 (Rev. 04/21)

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

Kristie Spies

(b) County of Residence of First Listed Plaintiff Codington, SD
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number)

Abourezk Law Firm; Mike Abourezk; PO Box 9460, Rapid City, SD 57709 (605) 342-0097

DEFENDANTS

State Automobile Insurance Companies, State Automobile Mutual Insurance Company, State Auto and Property

County of Residence of First Listed Defendant Franklin, OH

(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

1 U.S. Government Plaintiff 3 Federal Question (U.S. Government Not a Party)

2 U.S. Government Defendant 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)
(For Diversity Cases Only)

	PTF	DEF		PTF	DEF
Citizen of This State	<input checked="" type="checkbox"/>	<input type="checkbox"/>	Incorporated or Principal Place of Business In This State	<input type="checkbox"/>	<input type="checkbox"/>
Citizen of Another State	<input type="checkbox"/>	<input checked="" type="checkbox"/>	Incorporated and Principal Place of Business In Another State	<input type="checkbox"/>	<input type="checkbox"/>
Citizen or Subject of a Foreign Country	<input type="checkbox"/>	<input type="checkbox"/>	Foreign Nation	<input type="checkbox"/>	<input type="checkbox"/>

IV. NATURE OF SUIT (Place an "X" in One Box Only)

Click here for: Nature of Suit Code Descriptions

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input checked="" type="checkbox"/> 110 Insurance	PERSONAL INJURY	PERSONAL INJURY	<input type="checkbox"/> 422 Appeal 28 USC 158	375 False Claims Act
<input type="checkbox"/> 120 Marine	310 Airplane	<input type="checkbox"/> 365 Personal Injury - Product Liability	<input type="checkbox"/> 423 Withdrawal 28 USC 157	376 Qui Tam (31 USC 3729(a))
<input type="checkbox"/> 130 Miller Act	315 Airplane Product Liability	<input type="checkbox"/> 367 Health Care/ Pharmaceutical Personal Injury Product Liability	INTELLECTUAL PROPERTY RIGHTS	400 State Reapportionment
<input type="checkbox"/> 140 Negotiable Instrument	320 Assault, Libel & Slander	<input type="checkbox"/> 368 Asbestos Personal Injury Product Liability	<input type="checkbox"/> 820 Copyrights	410 Antitrust
<input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment	330 Federal Employers' Liability	<input type="checkbox"/> 370 Other Fraud	<input type="checkbox"/> 830 Patent	430 Banks and Banking
<input type="checkbox"/> 151 Medicare Act	340 Marine	<input type="checkbox"/> 371 Truth in Lending	<input type="checkbox"/> 835 Patent - Abbreviated New Drug Application	450 Commerce
<input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excluded Veterans)	345 Marine Product Liability	<input type="checkbox"/> 380 Other Personal Property Damage	<input type="checkbox"/> 840 Trademark	460 Deportation
<input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits	350 Motor Vehicle	<input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 880 Defend Trade Secrets Act of 2016	470 Racketeer Influence and Corrupt Organizations
<input type="checkbox"/> 160 Stockholders' Suits	355 Motor Vehicle			480 Consumer Credit (15 USC 1681 or 1692)
<input type="checkbox"/> 190 Other Contract	Product Liability			485 Telephone Consumer Protection Act
<input type="checkbox"/> 195 Contract Product Liability	360 Other Personal Injury			490 Cable/Sat TV
<input type="checkbox"/> 196 Franchise	362 Personal Injury - Medical Malpractice			850 Securities/Commodities/ Exchange
REAL PROPERTY	CIVIL RIGHTS	PRISONER PETITIONS	SOCIAL SECURITY	890 Other Statutory Actions
<input type="checkbox"/> 210 Land Condemnation	440 Other Civil Rights	Habens Corpus:	<input type="checkbox"/> 861 HIA (1395f)	891 Agricultural Acts
<input type="checkbox"/> 220 Foreclosure	441 Voting	<input type="checkbox"/> 463 Alien Detainee	<input type="checkbox"/> 862 Black Lung (923)	893 Environmental Matters
<input type="checkbox"/> 230 Rent Lease & Ejectment	442 Employment	<input type="checkbox"/> 510 Motions to Vacate Sentence	<input type="checkbox"/> 863 DIWC/DIWW (405(g))	895 Freedom of Information Act
<input type="checkbox"/> 240 Torts to Land	443 Housing/ Accommodations	<input type="checkbox"/> 530 General	<input type="checkbox"/> 864 SSID Title XVI	896 Arbitration
<input type="checkbox"/> 245 Tort Product Liability	445 Amer. w/Disabilities - Employment	<input type="checkbox"/> 535 Death Penalty	<input type="checkbox"/> 865 RSI (405(g))	899 Administrative Procedure Act/Review or Appeal of Agency Decision
<input type="checkbox"/> 299 All Other Real Property	446 Amer. w/Disabilities - Other	Other:	FEDERAL TAX SUITS	950 Constitutionality of State Statutes
	448 Education	<input type="checkbox"/> 540 Mandamus & Other	<input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant)	
		<input type="checkbox"/> 550 Civil Rights	<input type="checkbox"/> 871 IRS—Third Party	
		<input type="checkbox"/> 555 Prison Condition	26 USC 7609	
		<input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement		

V. ORIGIN (Place an "X" in One Box Only)

1 Original Proceeding 2 Removed from State Court 3 Remanded from Appellate Court 4 Reinstated or Reopened 5 Transferred from Another District (specify) 6 Multidistrict Litigation - Transfer 8 Multidistrict Litigation - Direct File

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
28 U.S.C. Sec. 1332**VI. CAUSE OF ACTION**Brief description of cause:
Insurance Bad Faith**VII. REQUESTED IN COMPLAINT:** CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P.

DEMAND \$

CHECK YES only if demanded in complaint:
JURY DEMAND: Yes No**VIII. RELATED CASE(S) IF ANY**

(See instructions):

JUDGE

DOCKET NUMBER

DATE

6/13/23

SIGNATURE OF ATTORNEY OF RECORD

Mike Abourezk

FOR OFFICE USE ONLY

RECEIPT #

AMOUNT

APPLYING IFFP

JUDGE

MAG. JUDGE

INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44**Authority For Civil Cover Sheet**

The JS 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

- I.(a) **Plaintiffs-Defendants.** Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.
- (b) **County of Residence.** For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)
- (c) **Attorneys.** Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)".
- II. **Jurisdiction.** The basis of jurisdiction is set forth under Rule 8(a), F.R.Cv.P., which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.
United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here.
United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.
Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.
Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; NOTE: federal question actions take precedence over diversity cases.)
- III. **Residence (citizenship) of Principal Parties.** This section of the JS 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.
- IV. **Nature of Suit.** Place an "X" in the appropriate box. If there are multiple nature of suit codes associated with the case, pick the nature of suit code that is most applicable. Click here for: [Nature of Suit Code Descriptions](#).
- V. **Origin.** Place an "X" in one of the seven boxes.
Original Proceedings. (1) Cases which originate in the United States district courts.
Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441.
Remanded from Appellate Court. (3) Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.
Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.
Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.
Multidistrict Litigation – Transfer. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407.
Multidistrict Litigation – Direct File. (8) Check this box when a multidistrict case is filed in the same district as the Master MDL docket.
PLEASE NOTE THAT THERE IS NOT AN ORIGIN CODE 7. Origin Code 7 was used for historical records and is no longer relevant due to changes in statute.
- VI. **Cause of Action.** Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.** Example: U.S. Civil Statute: 47 USC 553 Brief Description: Unauthorized reception of cable service.
- VII. **Requested in Complaint.** Class Action. Place an "X" in this box if you are filing a class action under Rule 23, F.R.Cv.P.
Demand. In this space enter the actual dollar amount being demanded or indicate other demand, such as a preliminary injunction.
Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.
- VIII. **Related Cases.** This section of the JS 44 is used to reference related pending cases, if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.

Date and Attorney Signature. Date and sign the civil cover sheet.